



February 16, 2001

Mr. Paul F. Wieneskie
Cribbs & McFarland
Attorneys at Law
P.O. Box 13060
Arlington, Texas 76094-0060

OR2001-0592

Dear Mr. Wieneskie:

You ask whether certain information is subject to required public disclosure under the Public Information Act, chapter 552 of the Government Code (the "Act"). Your request was assigned ID# 144256.

The Euless Police Department (the "department"), which you represent, received a document titled "Notice of Knowledge for Civil Complaint" (the "Notice"). You ask whether that document constitutes a request for information under the Act. In the event that it does, you claim that responsive information is excepted from disclosure under section 552.103 of the Government Code. We have considered your arguments and have reviewed the information you submitted. We also have received and considered the comments that the requestor submitted to this office.

Initially, we consider whether the Notice constitutes a request for information for the purposes of the Act. Generally, a request for information need not refer to the Act or be addressed to the officer for public information. *See* Open Records Decision Nos. 497 at 3 (1988), 44 at 2 (1974). As a hyper-technical reading of the Act does not effectuate its purpose, a written communication that reasonably can be judged to be a request for public information constitutes a request for information under the Act. *Id.* The Act does not require a governmental body to answer factual questions, conduct legal research, or create new information in responding to a request for information, but does require a governmental body to make a good faith effort to relate a request to the information that it holds. *See* Open Records Decision Nos. 563 at 8 (1990), 561 at 8-9 (1990), 555 at 1-2 (1990), 534 at 2-3 (1989). Similarly, the Act does not require a governmental body to take affirmative steps to create or obtain information that is not in its possession, so long as no other individual or entity holds that information on behalf of the governmental body that receives the request for it. *See* Gov't Code § 552.002(a); Open Records Decision Nos. 534 at 2-3 (1989), 518 at 3 (1989).

In this instance, the Notice refers to the arrest of a named individual and seeks “discovery” of particular information pertaining to that arrest, including “the names of the Public Servants at time of apprehension,” the time and location of the arrest, the charges, the “demeanor and legal disposition” of the arrested individual, the names of witnesses to the alleged crime, and various other specified details. You point out that the Notice “appears to be a demand for discovery in connection with proposed federal litigation.” We note that, under the Act, “[a] subpoena duces tecum or a request for discovery that is issued in compliance with a statute or a rule of civil or criminal procedure is not considered to be a request for information[.]” Gov’t Code § 552.0055. However, you do not advise us whether the Notice was issued in compliance with such a statute or rule. Therefore, having considered your position and carefully reviewed the Notice, we conclude that it constitutes a request for public information for the purposes of the Act.

Accordingly, we address your argument that the requested information is excepted from disclosure under section 552.103 of the Government Code. Section 552.103, the “litigation exception,” provides in relevant part:

(a) Information is excepted from [required public disclosure] if it is information relating to litigation of a civil or criminal nature to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person’s office or employment, is or may be a party.

...

(c) Information relating to litigation involving a governmental body or an officer or employee of a governmental body is excepted from disclosure under Subsection (a) only if the litigation is pending or reasonably anticipated on the date that the requestor applies to the officer for public information for access to or duplication of the information.

Gov’t Code § 552.103(a), (c). A governmental body that raises section 552.103 has the burden of providing relevant facts and documents sufficient to establish the applicability of the exception to the information that it seeks to withhold. To sustain this burden, the governmental body must demonstrate that: (1) litigation was pending or reasonably anticipated on the date that the governmental body received the written request for information and (2) the requested information is related to that litigation. *See University of Tex. Law Sch. v. Texas Legal Found.*, 958 S.W.2d 479 (Tex. App. – Austin 1997, no pet.); *Heard v. Houston Post Co.*, 684 S.W.2d 210 (Tex. App. – Houston [1st Dist.] 1984, writ ref’d n.r.e.); *see also* Open Records Decision No. 551 at 4 (1990). Both elements of the test must be established in order for information to be excepted from disclosure under section 552.103. *Id.*

The question of whether litigation is reasonably anticipated must be determined on a case-by-case basis. *See* Open Records Decision No. 452 at 4 (1986). To establish that litigation is reasonably anticipated, the governmental body must provide this office with “concrete

evidence showing that the claim that litigation may ensue is more than mere conjecture.” *Id.* Among other examples, this office has concluded that litigation was reasonably anticipated where the opposing party took the following objective steps toward litigation: (1) filed a complaint with the Equal Employment Opportunity Commission (“EEOC”), *see* Open Records Decision No. 336 (1982); (2) hired an attorney who made a demand for disputed payments and threatened to sue if the payments were not made promptly, *see* Open Records Decision No. 346 (1982); and (3) threatened to sue on several occasions and hired an attorney, *see* Open Records Decision No. 288 (1981).

In this instance, you state that “the [Notice] appears to be a threat of a federal lawsuit, and identifies the individuals listed at the top of the page . . . as potential defendants.” You inform us that one of the listed individuals is an employee of the city. You point out that the Notice is signed by an “angry mother” and concerns an incident involving her son. You assert that “[i]t certainly appears as if litigation is being threatened against the City and its police officer, from a reading of the ‘Complaint’ document.”

We have considered your arguments and the requestor’s allegations. We note, however, that you do not advise this office of any concrete steps that the requestor has taken toward the commencement of a lawsuit against the city. Therefore, having considered the totality of the circumstances, we find that you have not demonstrated that the requested information relates to litigation that was reasonably anticipated on the date of the receipt of the request for that information. Therefore, we conclude that the submitted information may not be withheld from the requestor under section 552.103. *See* Gov’t Code § 552.103(c); Open Records Decision Nos. 452 at 5 (1986) (requestor’s public threats of intent to sue do not alone trigger statutory predecessor to section 552.103), 331 at 1-2 (1982) (mere threats of litigation do not suffice to substantiate claim under statutory predecessor).

We note, however, that the submitted records contain information that is excepted from disclosure under section 552.130 of the Government Code. Section 552.130 provides in relevant part:

(a) Information is excepted from [required public disclosure] if the information relates to:

- (1) a motor vehicle operator’s or driver’s license or permit issued by an agency of this state;
- (2) a motor vehicle title or registration issued by an agency of this state; or
- (3) a personal identification document issued by an agency of this state or a local agency authorized to issue an identification document.

Gov’t Code § 552.130(a). Information relating to motor vehicle records, including a vehicle identification number, Texas license plate number, or Texas driver’s license number, must be withheld from disclosure under section 552.130.

Lastly, we also note that the submitted records contain a social security number that may be confidential under section 552.101 of the Government Code in conjunction with 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I), *if that information was obtained or is maintained by a governmental body pursuant to any provision of law enacted on or after October 1, 1990.*¹ See Open Records Decision No. 622 at 2-4 (1994). It is not apparent to this office that the social security number information in question was obtained or is maintained by the department pursuant to any provision of law enacted on or after October 1, 1990. You have cited no law, nor are we aware of any law, enacted on or after October 1, 1990, that authorizes the department to obtain or maintain a social security number. Therefore, we have no basis for concluding that the information in question was obtained or is maintained pursuant to such a law and is therefore confidential under section 405(c)(2)(C)(viii)(I) of the federal law. We caution you, however, that section 552.352 of the Government Code imposes criminal penalties for the release of confidential information. Therefore, prior to releasing a social security number, the department should ensure that it was not obtained and is not maintained pursuant to any provision of law enacted on or after October 1, 1990.

In summary, the "Notice of Knowledge for Civil Complaint" constitutes a request for information under the Public Information Act. In responding to the request, the department may not withhold the responsive records under section 552.103 of the Government Code. However, the submitted records contain motor vehicle record information that the department must withhold under section 552.130 of the Government Code and a social security number that may be excepted from disclosure under section 552.101 in conjunction with federal law. With the exception of information that the department must withhold under sections 552.130 and 552.101, the submitted records must be released.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

¹Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Unlike other exceptions to disclosure under chapter 552 of the Government Code, this office will raise section 552.101 on behalf of a governmental body. See Open Records Decision No. 325 (1982) (raising statutory predecessor).

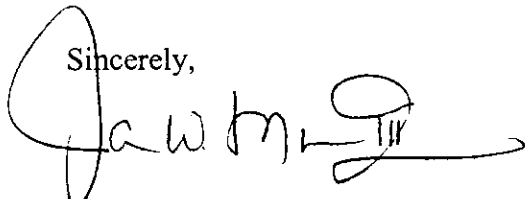
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read 'J W Morris III', with a large, stylized loop at the beginning and a horizontal line extending to the right.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/er

Ref: ID# 144256

Encl: Submitted documents

cc: Ms. Veronica A. Hannevig
23 Chaffee Road #3
Liberty, New York 12754
(w/o enclosures)